



INDUSTRY CIRCULAR

**DEPARTMENT OF
THE TREASURY**

Bureau of Alcohol, Tobacco and Firearms

Washington, D.C. 20226

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REDUCED RATE OF BEER TAX FOR SMALL BREWERS

To Brewers and Others Concerned:

Purpose. This circular is to inform you of a Treasury decision, soon to be published in the FEDERAL REGISTER, which will amend 27 CFR Part 245, Beer, by prescribing a reduced rate of tax on beer for certain qualified brewers.

Background. Public Law 94-529, effective January 1, 1977, reduced the tax on beer from \$9 to \$7 per barrel on the first 60,000 barrels of beer removed for consumption or sale in a calendar year by brewers (or controlled groups of brewers) who produce not more than 2,000,000 barrels annually. Brewers who operate more than one brewery, or controlled groups of brewers must include total production at all plants in determining compliance with the 2,000,000 barrel limitation, and shall pay reduced tax of \$7 per barrel on a maximum of 60,000 barrels. Brewers may pay the reduced rate of tax either by return, ATF Form 2034, or by a claim for refund at the end of the year.

Qualification of brewers. To take advantage of this tax reduction, a brewer must meet the following qualifications:

(1) Beer must be produced or brewed in a qualified brewery in the United States.

(2) Total production of beer, as reported on line 2 of the Brewer's Monthly Report of Operations, ATF Form 103, must not exceed 2,000,000 barrels of beer on a calendar-year basis. To determine compliance with this 2,000,000 barrel limitation, a brewer shall include both beer produced at qualified breweries within the United States and beer produced outside the United States. Brewers who operate more than one brewery must include the combined production of beer at all their breweries in determining eligibility under the 2,000,000 barrel limitation.

(3) The brewer must not be a member of a controlled group as defined in 26 U.S.C. sections 1563(a) and 5051(a)(2)(B) whose members together produce more than 2,000,000 barrels of beer per calendar year. Examples of this type of business structure include, but are not limited to: parent-subsidiary controlled groups, brother-sister controlled groups, and combined groups. Fifty-one percent stock ownership in a corporation need not be direct but may be acquired

through an option to buy stock, attribution from partnerships, corporations, or estates, and by family holdings. Regulations regarding controlled groups of corporations are contained in 26 CFR 1.1563-1 through 1.1563-3.

Payment of reduced tax by return, Form 2034. In order to pay the reduced rate of beer tax by return, the brewer must file a notice with the regional regulatory administrator in each region in which he operates breweries. This notice must be prepared in duplicate; the original will be submitted with the first tax return (prepayment or semimonthly) in which the brewer applies the reduced tax rate, and a copy of the notice will be retained with the brewer's records. The notice shall include the following information:

(1) A statement that the brewer does not anticipate producing more than 2,000,000 barrels of beer during the calendar year.

(2) A statement that the brewer is not a member of a controlled group of brewers, or if the brewer is a member of a controlled group, a statement that the combined production of the controlled group will not exceed or is not likely to exceed 2,000,000 barrels of beer during the calendar year.

(3) If the brewer is an eligible member of a controlled group of brewers, or if the brewer operates breweries at more than one location, a statement listing the number and location of breweries within the above classifications and how the 60,000 barrel limitation for the reduced rate of tax will be apportioned among the members of the controlled group of brewers, or among the breweries operated by the brewer.

(4) Each notice shall be executed by the brewer under penalties of perjury as provided in 27 CFR section 245.5.

The brewer shall pay the reduced rate of tax by return until he has taxpaid 60,000 barrels of beer (or the apportioned limitation) at the reduced tax rate for that calendar year.

Claim for refund of tax excessively collected. A situation may occur in which a brewer, who does not anticipate qualifying for the reduced tax rate during a given calendar year, finds at some time during the year that he does qualify to pay the reduced rate.

In this situation, the brewer may file a claim, IRS Form 843, with the regional regulatory administrator in the region of his principal place of business, for refund of tax excessively collected, based on the quantity of beer that was eligible to be taxpaid at the \$7 per barrel rate, subject to the 60,000 barrel or apportioned limitation. The claim shall contain the following information:

- (1) Name and address of the brewer.
- (2) Quantity of beer covered by the claim.
- (3) Amount of tax paid in excess.
- (4) A statement of the exact number of barrels of beer which the brewer produced during the calendar year.
- (5) A statement that the brewer is not a member of a controlled group of brewers, or a statement of the combined barrels of beer produced by all members of the controlled group in the calendar year.
- (6) If the brewer is a member of a controlled group of brewers, a list of the names and addresses of all the member brewers and a statement of how the 60,000-barrel limitation for the reduced rate of tax is to be apportioned among the members.

Claim procedures. Current regulations, 27 CFR 245.160 and 245.163, allow brewers to claim refund or credit of tax on returned, lost, or unmerchantable beer based upon a \$9 per barrel tax rate. Amended regulations will limit claims for this beer to \$7 per barrel for brewers who have qualified and paid the reduced tax rate. However, brewers within this classification may be allowed claims for refund, credit, or relief of tax based upon the \$9 per barrel tax rate if they can establish to the satisfaction of the regional regulatory administrator that the beer being claimed was originally taxpaid or determined at the higher rate of tax. Special mention should be made that this procedure will, in no way, apply to returned beer used to offset removals.

Repayment of tax reduction erroneously taken. A situation may also occur in which a brewer, who anticipates qualifying for the reduced tax rate during a calendar year and who pays the reduced rate, finds at some time during that calendar year that he does not qualify for the reduced rate of tax.

In this situation, the brewer must pay an additional \$2 per barrel on all beer removed at the reduced tax rate that year, plus interest computed from the date the beer was erroneously taxpaid at the lower rate. The repayment shall be made as an adjustment increasing the tax on the brewer's tax return, Form 2034(5130.7), not later than the period in which the brewer exceeds 2,000,000 barrels production.

ATF Form 2034(5130.7). To reflect both the reduced tax rate and the refund limitation on returned, lost, or unmerchantable beer, the tax return, ATF Form 2034(5130.7), has been revised to contain the following changes:

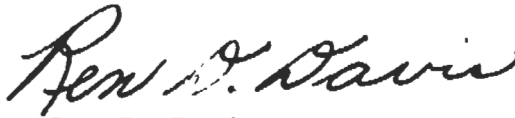
- (1) Line 10, Net Removals and Amount of Tax, has been subdivided to reflect removals and tax at the \$9 per barrel and the \$7 per barrel tax rates.
- (2) In Schedule A, a new line has been added to show the aggregate quantity of barrels removed for consumption or sale at the \$7 rate of tax, from January 1 to the end of the current tax period.
- (3) An additional sentence explaining the \$7 per barrel limitation on returned, lost, or unmerchantable beer has been included in item 2 of the instructions.

Availability of forms. The revised forms will be initially supplied to brewers by the regional office. To obtain additional supplies of the form, submit a requisition on ATF Form 1600.1 to the distribution center at the following address:

Bureau of Alcohol, Tobacco and Firearms
Distribution Center
3800 South Four Mile Run Drive
Arlington, Virginia 22206

Effective date. Public Law 94-529 is effective January 1, 1977. Therefore, qualified brewers may, upon filing the required notice, pay the reduced rate of tax for the first return period beginning January 1, 1977. All brewers shall use the revised Form 2034(5130.7) beginning with the first tax period in 1977.

Inquiries. Inquiries concerning this circular should refer to its number and be addressed to the Assistant Director (Regulatory Enforcement), Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, N.W., Washington, DC 20226.



Rex D. Davis
Director

Department of the Treasury
Bureau of Alcohol, Tobacco and Firearms
Washington, D.C. 20226

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